



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard, Virginia Beach, Virginia 23462

(757) 518-2000 Fax (757) 518-2103

www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Francis L. Daniel
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO DOMINION ENTERPRISES

Registration number 61523

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §10.1-1307.D, §10.1-1309, §10.1-1316.C, and §10.1-1184 between the State Air Pollution Control Board and Dominion Enterprises, for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Diesel" means capable of being fueled by distillate oil, liquid fuel which meets American Society for Testing Materials (ASTM) specification for numbers 1 and 2 fuel oil.
6. "Order" means this document, also known as a Consent Order.

7. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. "Dominion" means Dominion Enterprises, a Virginia general partnership.
9. "Regulations" means Virginia Regulations for the Control and Abatement of Air Pollution (9 VAC 5-80-10 et seq.).

SECTION C: Findings of Fact and Conclusions of Law

1. Dominion owns the office building known as Dominion Enterprises (the "Facility") located at 150 Granby Street, Norfolk. The office building was completed in December 2006.
2. On February 12, 2007 the TRO received a Virginia Freedom of Information Act request for information regarding the status of air permitting for four emergency electrical generators located at the Facility. A review of DEQ files did not find any information or permitting requests regarding emergency electrical generators at the Facility.
3. On February 20, 2007 TRO compliance staff inspected the facility and found four 864 Horsepower ("HP") diesel engine powered emergency electrical 600 kilowatt ("kW") generators, each with a listed date of manufacture of December 29, 2005, installed at the Facility and reportedly operated for testing only.
4. On March 5, 2007 an air permit application was received by the TRO for the four 864HP diesel engine powered emergency 600kW electrical generators matching the description of the four 864HP diesel engine powered emergency electrical 600kW generators observed at the Facility during the February 20, 2007 TRO compliance staff inspection of the Facility.
5. 9 VAC 5-80-1120(A)(Article 6) of the Regulations states: "No owner or other person shall begin actual construction, reconstruction, or modification of any stationary source without first obtaining from the board a permit to construct and operate or to modify and operate the source."
6. 9 VAC 5-80-1110 (C)(Article 6) of the Regulations states: "'Begin actual construction' means initiation of permanent physical on-site construction of an emissions unit. This includes, but is not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures."
7. 9 VAC 5-80-1110(C)(Article 6) of the Regulations states: "'Stationary source' means any building, structure, facility or installation, which emits any regulated air pollutant."
8. According to 9 VAC 5-80-1320(B)(2)(b) (Article 6) of the Regulations, the four 864HP diesel engine powered emergency electrical 600kW generators (aggregate

total 3,456HP and 2,400kW) installed at the Facility are not exempt from air permit requirements. Diesel engines of less than 1,675HP powering electrical generators of less than 1,125kW are exempt from the regulations.

9. Dominion violated the Regulations by constructing the four 864HP diesel engine powered emergency electrical 600kW generators (aggregate total 3,456HP, 2,400kW) without an air permit.
10. DEQ issued a Notice of Violation to Dominion on May 3, 2007 informing of the above facts and applicable regulatory and statutory citations.
11. On May 17, 2007 DEQ issued an air Stationary Permit to Install and Operate to Dominion for the four 864HP diesel engine powered emergency 600kW electrical generators.
12. Dominion maintains that a private contractor was responsible for submitting any air permit applications necessary for Dominion to install and operate the four 864HP diesel engine powered emergency electrical 600kW generators.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1316.C, orders Dominion, and Dominion voluntarily agrees, to pay a civil charge of \$3,000.00 within 30 days of the effective date of this Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia," shall indicate Dominion's Federal Identification Number, and shall be sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Dominion, for good cause shown by Dominion, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Dominion by DEQ on May 3, 2007. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order only, Dominion admits the jurisdictional allegations in the Order, but does not admit factual findings, and conclusions of law contained herein.
4. Dominion consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Dominion declares it has received fair and due process under the Administrative Process Act, Va. Code §§2.2-4000 *et seq.*, and the State Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Dominion to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Dominion shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Dominion shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Dominion shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Dominion. Notwithstanding the foregoing, Dominion agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Dominion. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Dominion from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Dominion voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Sept. 5, 2007.

Francis L. Daniel
Francis L. Daniel, Regional Director

Dominion voluntarily agrees to the issuance of this Order.

By: Charles E. Goodwyn

Date: August 31, 2007

Commonwealth of Virginia

City/County of NORFOLK

The foregoing document was signed and acknowledged before me this 31st day of

August, 2007, by Charles E. Goodwyn, who is
(name)

Vice President of Dominion Enterprises, on behalf of the Dominion Enterprises.
(title)

Brenda Y. Lawrence
Notary Public

My commission expires: April 10, 2010

